



RE: Ray Ave-BLR Redevelopment Corporation- draft environmental covenant

Julie VanHorn to: H. T. Bussmann III, Walter Shifrin
Cc: Bill Pedicino, Catherine Barrett, Kelly Schumacher

01/31/2013 03:04 PM

Dear Harry and Walter:

This will confirm our telephone conversation of today regarding the Ray Avenue Superfund Site and specifically the requirement of BLR Redevelopment Corporation to submit a Removal Site Evaluation under the Administrative Settlement Agreement and Order on Consent for Removal Site Evaluation, Docket No. CERCLA-07-2009-0009.

As we discussed, EPA requests that BLR resubmit tables 9 and 10, as well as any pages in the text that need to be updated because of the updates to these tables. You are not required to resubmit the entire hard copy document, but need only submit the corrected pages.

In addition, I have attached a draft environmental covenant for your review, as well as the Missouri model for this covenant. This draft is subject to concurrence by the State of Missouri. EPA proposes an environmental covenant in this matter to address the risk identified by the removal site evaluation.

Please contact me after you have had a chance to look over the environmental covenant. As a reminder I will be out of the office Feb. 13th to March 7th. Thank you for your cooperation in this matter.

Missouri's model:



final model MoECA Covenant Joint EPA-MDNR v10-1-2012.doc

Draft covenant for the BLR property:



rayave_blr_ec.doc

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(ABOVE SPACE RESERVED FOR RECORDER'S USE)

Document Title: Environmental Covenant

Document Date:

Grantor: Gustine Avenue Partnership
13400 Lakefront Drive
Earth City, Missouri 63105

Grantee: Gustine Avenue Partnership
13400 Lakefront Drive
Earth City, Missouri 63105

Departments: Missouri Department of Natural Resources
P.O. Box 176
1101 Riverside Drive
Jefferson City, Missouri 65102

United States Environmental Protection Agency – Region VII
11201 Renner Blvd.
Lenexa, Kansas 66219

Legal Description: The Property is an approximately 0.7 acre portion of the property located at 4327 Gustine Avenue, St. Louis, Missouri. The legal description of the property is as follows:
[Insert here if space allows OR refer to attached Exhibit]

ENVIRONMENTAL COVENANT

This Environmental Covenant ("Covenant") is entered into by and between the Grantor, Gustine Avenue Partnership ("Owner"), the Grantee, Gustine Avenue Partnership ("Holder"), the Missouri Department of Natural Resources ("MDNR"), and the United States Environmental Protection Agency ("EPA") (together, MDNR and EPA shall be referred to as the "Departments", or may be referred to generically as a "Department" when a provision could apply to either) pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039, RSMo. Owner, Holder, and the Departments may collectively be referred to as the "Parties" herein.

RECITALS

WHEREAS, Owner is the owner in fee simple of certain real property commonly known and numbered as 4327 Gustine Avenue, St. Louis, Missouri, which is located within the Ray Avenue Superfund Site as shown on the site map attached hereto as Exhibit A, and legally described as:

[insert legal description of the real property OR reference and attach as Exhibit B]

(the "Property");

WHEREAS, the Property is situated in the City of St. Louis, Missouri;

WHEREAS, Owner desires to grant to the Holder this Covenant for the purpose of subjecting the Property to certain activity and use limitations as provided in the Missouri Environmental Covenants Act;

WHEREAS, the MDNR and EPA each enter into this Covenant as a "Department" pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039 RSMo, with all the attendant rights of a "Department" under such Act, which include, but are not limited to, having a right to enforce this Covenant;

WHEREAS, Holder enters into this Covenant as a "Holder" pursuant to the Missouri Environmental Covenants Act, with all the attendant rights of a "Holder" under such Act, which include, but are not limited to, acquiring an interest in the Property and a right to enforce this Covenant;

WHEREAS, Gustine Avenue Partnership performed an investigation and "environmental response project" (as defined in the Missouri Environmental Covenants Act) on the Property, according to an Administrative Settlement Agreement and Order on Consent for Removal Site Evaluation, Docket No. CERCLA-07-2009-0009. The EPA requires the Owner to file an Environmental Covenant for the Property with the appropriate recorder of deeds because contaminants of concern remain at the site above levels that allow for unrestricted land use.

WHEREAS, the environmental response project conducted at the Property included the following activities:

The Owner conducted a removal site evaluation of the Property which included the following tasks: identification of the source and nature of releases of contaminants of concern; evaluation of the magnitude of the threat; determination of whether a removal action was necessary; collection and review of data, including sampling soil and ground water; identification of the extent of contamination; and, evaluation of the risk to human health and the environment. The Owner has submitted to EPA a removal site evaluation report that documents that the benzo(a)anthracene; benzo(a)pyrene; benzo(b)fluoranthene; dibenzo(a,h)anthracene; and indeno(1,2,3-cd)pyrene are contaminants of concern that were detected in the soil samples obtained at the Property. At present the Property has a building and the area surrounding the building is paved.

WHEREAS, upon completion of the environmental response project described above, contaminants of concern, which include, but may not be limited to benzo(a)anthracene; benzo(a)pyrene; benzo(b)fluoranthene; dibenzo(a,h)anthracene; and indeno(1,2,3-cd)pyrene, will remain on the Property above levels that allow for the unrestricted use of the Property; and

WHEREAS, the environmental response project described above is deemed protective if, and only if, the activity and use limitations described in this Covenant remain in place for as long as the contaminants of concern remain at the Property above levels that allow for the unrestricted use of the Property.

WHEREAS, for purposes of the environmental response project described above, and for purposes of responding to any requests or acting on any submittals made under this Covenant, EPA shall be the "Lead Agency" and MDNR shall be the "Support Agency" as specified below. The Departments intend that the Lead Agency will provide reasonable opportunities for consultation with the Support Agency as described below, and that the Support Agency will provide input, if any, to the Lead Agency within reasonable timeframes and as appropriate under the circumstances. If MDNR and EPA subsequently agree to change such roles, then the Lead Agency shall so notify the current Owner/Transferee and the Holder, with a copy to the Support Agency.

NOW THEREFORE, Owner, Holder, and the Departments agree to the following:

1. Parties.

The Owner, Holder, and the Departments are parties to this Covenant, and may enforce it as provided in Section 260.1030, RSMo.

2. Activity and Use Limitations.

Owner hereby subjects the Property to, and agrees to comply with, the following activity and use limitations:

LAND USE RESTRICTIONS:

A. No Residential Land Use:

Based on reports on file at EPA's offices in Lenexa, Kansas, and MDNR's offices in Jefferson City, Missouri, the Property currently meets the Departments' standards for non-residential use. Therefore, contaminants of concern remaining at the Property do not pose a significant current or future risk to human health or the environment so long as the restrictions below remain in place.

The Property shall **not** be used for residential purposes, which for purposes of this Covenant include but are not limited to: single family homes, duplexes, multi-plexes, apartments, condominiums, schools, retirement or senior/child-care facilities, or any land use where persons can be expected to reside.

SOIL RESTRICTIONS:

B. No Disturbance of Soil:

Based on reports on file at the EPA's offices in Lenexa, Kansas, and MDNR's offices in Jefferson City, Missouri, contaminants of concern remaining at the Property exceed the Departments' standards for construction worker exposure, but do not pose a significant current or future risk to human health or the environment with respect to non-residential uses of the property so long as the soil is not disturbed such that exposure may result.

Therefore, soil on the Property shall not be excavated or otherwise disturbed in any manner without the prior written approval of the Lead Agency. If an Owner/Transferee desires to disturb soil at the Property, then such Owner/Transferee shall request permission to do so from the Departments at least 30 days before the soil disturbance activities are scheduled to begin. Based on the potential hazards associated with the soil disturbance activities, the Lead Agency (after a reasonable opportunity for consultation with the Support Agency) may deny the request to disturb the soils or may require specific protective or remedial actions before allowing such soil disturbance activities to occur.

Contaminated soil may be disturbed if necessary during an emergency (such as water or gas main break, fire, explosion or natural disaster), in which case the Owner/Transferee shall ensure that notification is provided to the Departments and Holder verbally or in writing as soon as practicable, but no later than 48 hours after the disturbance begins. Any contaminated soil disturbed as part of an emergency response action must be returned to its original location and depth, or properly characterized, managed and disposed of, in accordance with all applicable local, state, and federal requirements. Within 30 days after such emergency has been abated, the Owner/Transferee shall provide a written report to the Departments describing such emergency and any response actions.

Construction Worker Notice

In the event that construction or excavation work is to be performed that may expose workers to contaminated soil on the Property, Owner/Transferee shall ensure that actual notice is provided in advance, both verbally and in writing, to any person or entity performing any work that will or is likely to result in exposure to such soil, so that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations. Such notice shall include, but not be limited to, providing a copy of this Covenant to any individuals conducting or otherwise responsible for the work. Owner/Transferee shall maintain copies of any such written notice for a period of at least three years, and shall provide copies of such records to the Departments and/or Holder upon request.

C. Engineered Controls for Soil:

Based on reports on file at EPA's offices in Lenexa, Kansas, and MDNR's offices in Jefferson City, Missouri, contaminants of concern remaining in the soil at the Property do not pose a significant current or future risk to human health or the environment so long as the engineered controls described below are maintained so as to prevent exposure, release, or migration of contaminants from the soil.

Therefore, the following engineered controls must remain in place and remain effective unless and until the Lead Agency (after a reasonable opportunity for consultation with the Support Agency) provides written approval for any modifications: The Owner shall maintain the paved areas and building slab so that they remain an effective barrier to contaminated soil.

If any person desires in the future to use the Property for any purpose or in any manner that is prohibited by this Covenant, the Departments and the Holder must be notified in advance so that a Modification, Temporary Deviation, or Termination request can be considered as described below. Further analyses and/or response actions may be required prior to any such use.

3. Running with the Land.

This Covenant shall be binding upon Owner and Owner's heirs, successors, assigns, and other transferees in interest (collectively referred to as "Transferees") during their period of ownership (except that the obligation described below in paragraph 17 to re-direct any mis-directed communication shall continue beyond an Owner/Transferee's period of ownership), and shall run with the land, as provided in Section 260.1012, RSMo, subject to amendment or termination as set forth herein. The term "Transferee(s)," as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees (subject to applicable lender liability protections prescribed by law), easement holders, and/or lessees.

4. Location of Files and Records.

Records of this environmental response project for the Property are currently located in EPA's offices in Lenexa, Kansas, and in MDNR's offices in Jefferson City, Missouri. Information regarding the environmental response project may be obtained from the Departments by making a request to EPA pursuant to the United States Freedom of Information Act, 5 U.S.C. § 552, and/or to MDNR pursuant to the Missouri "Sunshine Law", Chapter 610, RSMo, by referencing the site identification name of Ray Avenue Superfund Site, SSID #079N, OU 01.

5. Enforcement.

Compliance with this Covenant may be enforced as provided in Section 260.1030, RSMo. Failure to timely enforce compliance with this Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict any person from exercising any authority or rights under any other applicable law.

In addition to or in lieu of any other remedy authorized by law, prior to taking legal action to enforce this Covenant, a Department may require Owner/Transferee to submit a plan to investigate and/or correct any alleged violation of this Covenant, in which case such Department shall provide written notification to the other Department and the Holder. If such Owner/Transferee fails to act within the required timeframe or if a Department finds a proposed remedy unacceptable, that Department may pursue any remedy authorized by law. In such event, such Department shall provide written notification to the other Department and the Holder, prior to or contemporaneously with any legal action taken to enforce this Covenant.

6. Right of Access.

Owner, on behalf of itself and any Transferees, hereby grants to the Holder and the Departments and their respectively authorized agents, contractors, and employees, the right to access the Property at all reasonable times for implementation, monitoring, inspection, or enforcement of this Covenant and the related environmental response project. Nothing herein shall be deemed to limit or otherwise impede a Department's rights of access and entry under federal or state law or other agreement.

7. Compliance Reporting.

Owner/Transferee shall submit to Holder and the Departments, by no later than January 31st of each year, documentation verifying that the activity and use limitations imposed hereby were in place and complied with during the preceding calendar year. The Compliance Report shall include the following statement, signed by Owner/Transferee:

I certify that to the best of my knowledge, after thorough evaluation of appropriate facts and information, the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

In the event that an Owner, Transferee, or Holder becomes aware of any noncompliance with the activity and use limitations described in paragraph 2 above, such person or entity shall notify all other Parties to this Covenant in writing as soon as possible, but no later than ten (10) business days thereafter.

8. Additional Rights.

None specified.

9. Notice upon Conveyance.

Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recording reference for this Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 20____, RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF _____ COUNTY, _____, ON _____, 20____, AS DOCUMENT _____, BOOK _____, PAGE _____.

Owner/Transferee shall notify Holder and the Departments within ten (10) days following each conveyance of an interest in any portion of the Property. The notice shall include the name, address, and telephone number of the Transferee, and a copy of the deed or other documentation evidencing the conveyance.

10. Representations and Warranties.

Owner hereby represents and warrants to Holder and the Departments that:

- a) Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all of Owner's obligations hereunder;
- b) this Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected; and

[include one of the following, as appropriate:]

[option 1: c) only]

- c) Owner is the sole owner of the Property and holds fee simple title, which is free, clear and unencumbered.

[option 2: both d) and e)]

- d) Owner has identified all other parties who hold any interest (e.g., encumbrance) in the Property and notified such parties of Owner's intention to enter into this Covenant; and
- e) to the extent that other interests in the Property exist, Owner [*and any other person who holds an interest*] has agreed to subordinate such interest to this Covenant, pursuant to Section 260.1006.4, RSMo, and the subordination agreement [(*attached hereto as Exhibit __, or recorded at _____*)].

11. Amendments, Termination, and Temporary Deviations.

This Covenant may be amended or terminated by approval of the Departments, Holder, and the current Owner/Transferee of record at the time of such amendment or termination, pursuant to section 260.1027 RSMo. Any other Parties to this Covenant hereby waive the right to consent to any amendment to, or termination of, this Covenant. Following signature by all requisite persons or entities on any amendment or termination of this Covenant, Owner/Transferee shall record and distribute such documents as described below.

Temporary deviations from the obligations or restrictions specified in this Covenant may be approved by the Lead Agency in lieu of a permanent amendment to this Covenant. Owner/Transferee may submit a written request to the Departments to temporarily deviate from specified requirements described herein for a specific purpose and timeframe, which shall not exceed ninety (90) days. Any such request shall be transmitted to the Holder and the Departments as described below. The request must specifically invoke this paragraph of this Covenant, fully explain the basis for such temporary deviation, and demonstrate that protection of human health and the environment will be maintained. After a reasonable opportunity for consultation with the Support Agency, the Lead Agency will evaluate the request and convey approval or denial in writing. Owner/Transferee may not deviate from the requirements of this Covenant unless and until such approval has been obtained.

12. Severability.

If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Governing Law.

This Covenant shall be governed by and interpreted in accordance with the laws of the State of Missouri.

14. Recordation.

Within thirty (30) days after the date of the final required signature upon this Covenant or any amendment or termination thereof, Owner shall record this Covenant with the appropriate recorder of deeds for each county in which any

portion of the Property is situated. Owner shall be responsible for any costs associated with recording this Covenant.

15. Effective Date.

The effective date of this Covenant shall be the date upon which the fully executed Covenant has been recorded with the office of the recorder of each county in which the Property is situated.

16. Distribution of Covenant.

Within thirty (30) days following the recording of this Covenant, or any amendment or termination of this Covenant, Owner/Transferee shall, in accordance with Section 260.1018, RSMo, distribute a file- and date-stamped copy of the Covenant as recorded with the appropriate recorder of deeds (including book and page numbers) to: (a) each of the Parties hereto; (b) each person holding a recorded interest in the Property, including any mortgagees or easement holders; (c) each person in possession of the Property; (d) each municipality or other unit of local government in which the Property is located; and (e) any other person designated herein.

17. Contact Information.

Any document or other item required by this Covenant to be given to another party hereto shall be sent to:

If to Owner/Transferee:

[title]

[address]

If to Holder:

[title]

[address]

If to MDNR:

Project Manager – Ray Avenue Superfund Site
Program/Section within DNR], Hazardous Waste Program
P.O. Box 176
Jefferson City, MO 65102-0176

If to EPA:

Project Manager – Ray Avenue Superfund Site
U.S. Environmental Protection Agency – Region VII
11201 Renner Blvd.
Lenexa, KS 66219

Owner/Transferee, Holder, or the Departments may change their designated recipient of such notices by providing written notice of the same to each other. If any notice or other submittal under this Covenant is received by a former

Owner/Transferee who no longer has an interest in the Property, then such former Owner/Transferee shall notify the Departments, the Holder, and the current Owner/Transferee of the Property regarding the mis-directed communication.

18. Reservation of Rights.

This Covenant is a necessary component of the environmental response project described above. Nothing in this Covenant shall be construed so as to relieve any Owner/Transferee from the obligation to comply with this Covenant during their period of ownership, or the obligation to comply with any other source of law. This Covenant is not a permit, nor does it modify any permit, order, agreement, decree, or judgment issued under any federal, State, or local laws or regulations, and the Departments do not warrant or aver in any manner that an Owner/Transferee's compliance with this Covenant will constitute compliance with any such requirements. The Departments reserve all legal and equitable remedies available to enforce this Covenant or any other legal requirement, and/or to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Property. Nothing herein shall be construed so as to prevent a Department or Holder from taking any independent actions as allowed by law.

The undersigned represent and certify that they are authorized to sign this Covenant on behalf of their respective Parties.

IT IS SO AGREED:

FOR OWNER:

By: _____ Date: _____
Name (print): _____
Title: _____
Address: _____

STATE OF _____)
_____))
COUNTY OF _____)

On this ____ day of _____, 20____, before me a Notary Public in and for said state, personally appeared _____ (Name), _____ (Title) of _____ (Corporate Name), known to me to be the person who executed the within Covenant on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public

FOR HOLDER:

By: _____

Date: _____

Name (print): _____

Title: _____

Address: _____

STATE OF _____)

)

COUNTY OF _____)

)

On this ____ day of _____, 20____, before me a Notary Public in and for said state,
personally appeared _____ (Name), _____ (Title) of
_____ (Corporate Name), known to me to be the person who
executed the within Covenant on behalf of said corporation and acknowledged to me that he/she
executed the same for the purposes therein stated.

Notary Public

FOR MDNR

David J. Lamb, Director
Hazardous Waste Program
Missouri Department of Natural Resources
PO Box 176
Jefferson City, MO 65102-0176

STATE OF MISSOURI)
)
COUNTY OF _____)

On this ____ day of _____, 20__, before me a Notary Public in and for said state, personally appeared David J. Lamb, Director of the Hazardous Waste Program of the Missouri Department of Natural Resources, a state agency, known to me to be the person who executed the within Covenant on behalf of said agency by authority of its Director and acknowledged to me that he executed the same for the purposes therein stated.

Notary Public

FOR EPA

By: _____ Date: _____
Cecilia Tapia, Director
Superfund Division
EPA Region VII
11201 Renner Boulevard
Lenexa, Kansas 66219

STATE OF _____)
_____)
COUNTY OF _____)

On this ____ day of _____, 20__, before me a Notary Public in and for said state, personally appeared Cecilia Tapia, Director Superfund Division of the _____ of the U.S. Environmental Protection Agency - Region VII, a federal agency, known to me to be the person who executed the within Covenant on behalf of said agency by authority of its Administrator and acknowledged to me that he executed the same for the purposes therein stated.

Notary Public